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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/761,814

01/21/2004

Daniel S. Henry

12929.5006USC1

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09/12/2006

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EXAMINER

PRICE, CARL D

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/761,814	HENRY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	CARL D. PRICE	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06/29/2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-29 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-29 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### Response to Arguments

Applicant's arguments with respect to claims **23-29** and **31** have been considered but are moot in view of the new ground(s) of rejection.

Applicant submits that the prior art references of Merrill alone, and Merrill in view of teachings of Ferguson, fail to meet or suggest to one of ordinary skill in the art the invention set forth in the claims. Applicant therefore requests reconsideration and withdrawal of the Examiner's rejection. More specifically, applicant argues the following:

“Merrill does not teach or suggest a stove as recited in claim 23. Specifically, Merrill does not teach or suggest as recited in claim 23, that the baffle plate and air manifold (hollow plate S) are moveable from a horizontal closed configuration, in which gases flow through a passageway, to an open configuration, in which gases flow through a bypass pathway separate from the passageway. Moreover, claim 23 does not read on the stove in Merrill. Rather, the flow of gases in the Merrill stove is dependent upon the placement of the slide M' relative to the fixed plate P. See Pg. 2, Ins. 2-10. If the slide M9 is moved rearwardly, the aperture p is closed and gases are directed around the plate S regardless of whether the plate S is positioned horizontally or vertically.”

“Ferguson discloses a stove body having a front door 28 and a removable top griddle 22, Ferguson does not disclose a structure for redirecting air flow as recited in claim 28. Thus, even if the Merrill stove was modified with the teachings of Ferguson as suggested by the Examiner, the combination of the two references still would not teach or suggest all of the features recited in claim 29.”

The Examiner disagrees with applicant's suggestion that “the flow of gases in the Merrill stove is dependent upon the placement of the slide M' relative to the fixed plate P” as support for the argument that Merrell does not teach or suggest the claimed stove. While the placement of the slide M' with respect to portions of the plate (P) the flow of gases along, around or about the plate (P) are not dependent only on the slide M'. When in oriented in the nearly horizontal position (figure 8) the hollow plate blocks aperture (p), also “closable by slide M' ”. Merrell does state that that the “throat” is closed by sliding the plate M' forward (also shown in Figure 8) but

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only while charging the magazine. While not shown in the drawing figures, Merrell does not include structure which would preclude the M' and the nearly horizontal positioned hollow plate (S) both blocking the aperture (p), wherein the wherein when in this closed configuration, the baffle (S) plate would necessarily direct gases within the combustion chamber to flow from the combustion chamber, around the baffle plate (S), through the throat or passage, and out the chimney. And, wherein when the baffle or hollow plate (S) is in the open or non-horizontal configuration, a by-pass pathway (through (p)) is formed by the baffle or hollow plate (S) unblocking separate from the passage (p). That is, when the plate M' is pulled forward at the time the baffle or hollow plate (S) is oriented in the non-horizontal or vertical position (shown in phantom Figure 8).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

**Claims: Rejected under 35 U.S.C. 102(b)**

Claims **23, 24, 26** and **28** is rejected under 35 U.S.C. 102(b) as being anticipated by **US00163678 (MERRILL)**.

**US00163678 (MERRILL)** shows and discloses method of adding fuel to a stove, a stove comprising:

- the stove body including at least a front wall (B);
- the **US00163678 (MERRILL)** “hollow plate” (S) itself includes a baffle plate and air manifold which are moveable from a substantially horizontal closed configuration to an open configuration. That is the upper plate (not referenced) of hollow member (S) in **US00163678 (MERRILL)** defines a baffle plate while the open space and remaining hollow plate portions define an air manifold, at least in the same manner broadly set forth in applicant’s claims.
- the orifices (s) of manifold (S) permit air to pass into the secondary combustion space (i.e. - the space below the horizontal position shown in figure 8), when in the lowered position (indicated in phantom; figure 8).
- drawing heat and gases from the fire out through a by-pass pathway (at P and G; figure 8) into a chimney of the stove;
- opening an access door (O) positioned at a top wall (i.e. – at B, O; the top front wall portion) of the stove;
- loading fuel through the door (i.e. – “The magazine is charged through a doorway, O, in front of the stove, or by other convenient channel. Two plates, of which on, P, is fixed, and the other one, Q, is movable, prevent the coal dropping directly into the fire in the operation of charging the magazine”), past the baffle plate and into the combustion chamber;
- moving the baffle plate into the substantially horizontal closed configuration to block the bypass passage (P); and

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- closing the access door (i.e. – “Except while being charged, the magazine is closed at top by means of a flap or cover, M, having a handle, N, outside of the stove.”).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims: Rejected under 35 U.S.C. 103(a)**

Claims 25, 27, 29 and 31 are rejected under 35 U.S.C. 103(a) as obvious over US00163678 (MERRILL) in view of US004856491 (FERGUSON ET AL), both of record.

US00163678 (MERRILL) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the stove body including at least a front wall and a top wall each defining an opening for access doors therein.

US004856491 (FERGUSON ET AL) teaches, form the same solid fuel burning heater field of endeavor as US00163678 (MERRILL), providing a the stove body including at least a front wall and a top wall each defining an opening for a front access door (28) and a top fuel loading door (21) therein, respectively.

In regard to claims **25, 27, 29** and **31**, for the purpose of a decorative or aesthetically pleasing view of the fire through a front loading door (see column 9, lines 48-60) and for providing a removable griddle surface on the top of the stove which also permits fuel loading access, it would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify **US00163678 (MERRILL)** to include either or both front door and top loading access doors, in view of the teaching of **US004856491 (FERGUSON ET AL)**.

**Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

**USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CARL D. PRICE** whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Carl D. Price', with a stylized flourish at the end.

CARL D. PRICE

Primary Examiner

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